

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, ) CRIMINAL NO. 00-00379HG  
Plaintiff, )  
vs. )  
RUSSELL GORDON MASCOTO, )  
Defendant. )

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TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on  
Monday, December 8, 2003, at 3:54 p.m., at Honolulu, Hawaii,

BEFORE: THE HONORABLE HELEN GILLMOR  
United States District Judge  
District of Hawaii

REPORTED BY: STEPHEN B. PLATT, RMR, CRR  
Official U. S. District Court Reporter  
District of Hawaii

APPEARANCES: THOMAS C. MUEHLECK, ESQ.  
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Attorney for the Government

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**EXHIBIT** E

1 MONDAY, DECEMBER 8, 2003

3:54 P.M.

2 -ooOoo-

3 THE CLERK: Criminal Number 00-379, the United  
4 States of America versus Russell Gordon Mascoto.

5 This case is called for resentencing.

6 MR. MUEHLECK: Tom Muehleck with FBI Special Agent  
7 Terrence Chu for the United States. Good afternoon,  
8 Your Honor.

9 THE COURT: Good afternoon.

10 MR. BARBEE: Good afternoon, Your Honor.

11 Rustam Barbee appearing with Russell Mascoto; he is  
12 present in court.

13 THE COURT: Good afternoon.

14 Mr. Mascoto, have you had an opportunity to review  
15 the presentence report with Mr. Barbee?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Thank you; you may be seated.

18 Now, Mr. Barbee, what objections do you continue to  
19 have?

20 MR. BARBEE: Yes, Your Honor, thank you.

21 Essentially, the objections that Mr. Mascoto has are  
22 stated in the recent written filing entitled "Supplemental  
23 Response and Objections to Presentence Report."

24 Essentially, he's objecting --

25 THE COURT: December 4?

1 MR. BARBEE: Yes, Your Honor.

2 Essentially, he's objecting to those paragraphs of  
3 the presentence report which state that he has a mandatory  
4 minimum ten-year term that he's facing as opposed to a minimum  
5 five-year term. And I believe those would be paragraphs 52,  
6 18 and 19.

7 THE COURT: Okay, having received the Probation  
8 Officer's response to that objection, which was, I guess,  
9 filed today... what is your position with respect to that  
10 interpretation, Mr. Barbee?

11 MR. BARBEE: Yes, Your Honor. I'm not surprised at  
12 their interpretation. And, in fact, I did point out in my  
13 filing of December 4 that there are cases that interpret the  
14 position taken here by defendant against the defense and in  
15 favor of the Probation Department's interpretation.  
16 Essentially, the research I conducted indicated that the  
17 statutes follow the guideline -- I believe it's guideline  
18 Section 2D1.1's manner of calculating methamphetamine. And it  
19 says that you can either go with the pure weight of the drug,  
20 which is extrapolated by going with the gross weight  
21 multiplied by the percentage and coming out with a "pure"  
22 amount; or, you can go with the mixture. And whichever weight  
23 determination carries the highest base offense that the  
24 guidelines say apply the highest level -- for base offense.

25 And then there are cases that have looked at that

1 issue and said that the statutes also work in a similar  
2 fashion, even though the statutes don't explicitly appear to  
3 work that way, I am aware that some of the cases say that you  
4 apply the statutes in a similar fashion that the guidelines  
5 are applied; however, that being said, Mr. Mascoto's argument  
6 seems to be a logically based argument, based upon the plain  
7 language of the statutes. And also, he's cited the court to a  
8 previous ruling by Judge Mollway in another case that appears  
9 to indicate -- or appears to support, at least partially, his  
10 position taken here. And the bottom line argument is that if  
11 the statutes are ambiguous as to whether to sentence him based  
12 upon a mixture of between 50 and 500 grams of methamphetamine,  
13 or a -- that weight of methamphetamine which is a mixture of  
14 contaminate medium and then methamphetamine, in this case, 72  
15 percent, I believe, that you apply the mixture statute, which  
16 is the (1)(B) -- is the (b)(1)(B), five to 40 years, and not  
17 the (b)(1)(A), which is the 10 years to life.

18 So, it's a logically-based argument. It has been  
19 dealt with in other courts before; however, one other twist in  
20 this case, which I haven't seen in the research I did, was  
21 that even though the plea agreement and the indictment both  
22 allege crystal methamphetamine, or ice, the government in this  
23 case does concede that the mixture having been tested by the  
24 DEA lab, was, in fact, not crystal methamphetamine, or ice,  
25 but was, in fact, a mixture containing D meth hydrochloride.

1 So that does make it a little -- that little twist makes it a  
2 little, I think, unique, compared to the cases I've read.

3 THE COURT: So, how -- go ahead.

4 MR. BARBEE: And, lastly, Your Honor, Mr. Mascoto's  
5 position about the plea agreement, in response, I guess, to  
6 the addendum by the Probation Department, is that at the time  
7 of his plea agreement, he was operating, I guess, on faith  
8 that the substance was, in fact, crystal methamphetamine, or  
9 ice, which it later turned out it wasn't. So he did  
10 stipulate, in his memorandum of plea agreement, that it was  
11 crystal methamphetamine or ice; however, at that time, with  
12 previous counsel, he did not have the DEA lab report, which  
13 came back -- and, probably, the government didn't have it,  
14 either -- indicating that the substance was not crystal  
15 methamphetamine, or ice. So that stipulation by the parties  
16 between the government and the defendant in this case was  
17 actually factually in error. And the government has since  
18 conceded that that language in the plea agreement saying that  
19 it was crystal methamphetamine, or ice, was in error.

20 And the government's filing, which is attached as  
21 Defendant's Exhibit A, United States' response to defendant's  
22 motion for independent testing, filed August 22nd, 2001, I  
23 believe, Mr. Muehleck, U.S. Attorney's Office, admits that the  
24 substance was, in fact, not ice, and not crystal  
25 methamphetamine, but 72 percent -- which is less than the 80

1 percent required to classify the substance as ice.

2 So that is another factor that I didn't see in any  
3 of the cases.

4 But, the bottom line is, Your Honor, the  
5 defendant -- and I'm probably getting ahead of myself here, to  
6 argument -- the defendant would like the court to resentence  
7 him to the same sentence that it imposed previously, which was  
8 the 87-month term.

9 THE COURT: Thank you.

10 Mr. Muehleck?

11 MR. MUEHLECK: Well, first of all, we have two  
12 decisions from the Ninth Circuit -- Alfeche is the first, and  
13 Asuncion, I think, is the second -- where we deal with this  
14 exact issue. That we are talking about either the purity, the  
15 amount of pure drug, from the whole mixture; that is, if you  
16 take the whole mixture, the whole aggregate mixture, what is  
17 the amount of pure methamphetamine that you have? If you have  
18 got a thousand grams and it's 10 percent pure, then you've got  
19 100 grams of pure methamphetamine. And, under Alfeche, that's  
20 what they talk about. It's -- in this case, over 50 grams of  
21 methamphetamine, pure; or over 50 grams of an aggregate, or --  
22 between 500 and 1,000 grams of an aggregate -- of a mixture  
23 containing a detectable amount of methamphetamine.

24 In this case we have 260-some grams, and with the  
25 purity level, it was 163, I think it is, grams of pure



1 methamphetamine.

2           Additionally, the defendant at the time of his  
3 change of plea, was questioned about this and said that he  
4 understood he was pleading guilty to a ten-year mandatory  
5 minimum. He did understand that.

6           THE COURT: Okay, but, at that time, there was no  
7 lab report.

8           MR. MUEHLECK: That's right.

9           THE COURT: So, everyone was in error.

10           MR. MUEHLECK: Well -- well, everybody was in error  
11 as to whether it was 80 percent pure methamphetamine --  
12 d-methamphetamine hydrochloride to make it ice. But, by  
13 statute, it was still 50 grams of methamphetamine, meaning --  
14 50 grams -- there was 50 grams of pure methamphetamine. And  
15 the case -- in fact, there is 50 grams of pure  
16 methamphetamine. There's 163 grams of pure methamphetamine.  
17 And that's what the lab report shows.

18           Now, did it say that it was 50 grams of pure  
19 d-methamphetamine hydrochloride? No. What we had was a gross  
20 weight of the product, which appeared to be good, crystallized  
21 methamphetamine. Now, it wasn't good enough to be ice within  
22 the meaning of the statute, but it was in a crystallized form  
23 of 72 percent pure. And then it turned out to be 163 grams.

24           So, I submit to the court, nobody's been misled by  
25 this. Nobody -- the statute is pretty clear what this is.

1 The purpose of the statute is pretty clear, what the meaning  
2 of it is, and the context in which the Congress passed this  
3 statute. I don't know what more we can do with this, Judge.

4 THE COURT: Well, do you disagree with Judge  
5 Mollway's opinion?

6 MR. MUEHLECK: Yes. We have always disagreed with  
7 that opinion. We have changed the pleadings to make sure that  
8 everybody was happy with the way it's pled; but, if it's pled  
9 to 50 grams of methamphetamine, does it have to say 50 grams  
10 of pure methamphetamine -- d-methamphetamine, hydrochloride, a  
11 schedule two -- (incomprehensible) -- and that's what we had.  
12 We had more than 50 grams of methamphetamine ice. We had 163  
13 grams in -- not in the purest form, of 260 -- or 231 grams,  
14 but we had more than 50 grams pure. In fact, we had 161 grams  
15 pure.

16 That's where we're coming from. Thank you.

17 THE COURT: Thank you.

18 Well, I understand and appreciate that at the time  
19 of the original sentencing everyone was unclear; however --  
20 and, so, certainly, your client, Mr. Barbee, isn't held to the  
21 stipulation. There's no possible reason why anybody should be  
22 held to that stipulation. But Mr. Muehleck's point is, it  
23 doesn't make any difference. And, unfortunately, I think that  
24 is the case law. I don't see how to get around that.

25 While your theory and your reasoning is logical, we



1 have case law that we have to deal with. And so I adopt the  
2 Probation Officer's reasoning from the presentence report,  
3 with respect to that issue.

4 Now, the court adopts the factual statements  
5 contained in the presentence investigation report to which  
6 there is no objection. And we have clarified with respect to  
7 the ones that are.

8 At this time the court is placing the presentence  
9 report in the record under seal. If an appeal is taken,  
10 counsel on appeal may be permitted access to the sealed report  
11 with the exception of the "recommendations" section.

12 There is a plea agreement in this matter, and the  
13 court is satisfied that the agreement adequately reflects the  
14 seriousness of the actual offense behavior, and that accepting  
15 the plea agreement will not undermine the statutory purposes  
16 of sentencing. It is therefore accepted.

17 The court adopts the Probation Officer's conclusions  
18 as to the total offense level of 31, criminal history category  
19 of three. And so the guidelines provide for a range of 135 to  
20 168 months. The defendant is not eligible for probation.  
21 Supervised release of five years. Fine range of \$15,000 to  
22 \$4 million. Community restitution not to exceed the fine  
23 imposed, pursuant to United States sentencing guideline  
24 Section 5E1.2. And a special assessment of \$100.

25 Now, this is your opportunity to speak to

1 sentencing, Mr. Barbee.

2 MR. BARBEE: Yes, Your Honor.

3 THE COURT: And your motion for downward departure.

4 MR. BARBEE: Yes, Your Honor.

5 Mr. Mascoto has indicated in a letter to the court  
6 his progress that he's had since being incarcerated. He would  
7 ask that the court sentence him to the minimum possible  
8 sentence in this case. Based upon the court's ruling, that  
9 would be 120 months, minus time already served in custody.

10 Further, Your Honor, he would request that the court  
11 recommend a designated facility of Terminal Island. The  
12 reason he's asking to switch from Sheridan to Terminal Island  
13 is because of difficulties he's been having of getting into  
14 the programs at Sheridan because of the long wait list. But  
15 he believes that if he were designated to Terminal Island, the  
16 wait list would be much less -- less of a list.

17 THE COURT: I haven't heard good things about  
18 Terminal Island, Mr. Barbee...

19 MR. MUEHLECK: Either have I, Your Honor.

20 THE COURT: I am happy to do that, but -- maybe  
21 Lompoc?

22 (Discussion off the record  
23 between counsel and the defendant.)

24 MR. BARBEE: Your Honor, Mr. Mascoto asks if he  
25 could directly address the court on this subject? Because I

1 didn't do a lot of research on it.

2 THE COURT: Let's do that after.

3 MR. BARBEE: Okay.

4 THE COURT: Let's deal with the sentencing and put  
5 that on the shelf for now. I will hear from you, though.

6 MR. BARBEE: Yes, Your Honor.

7 I believe -- and I may be incorrect, but I believe  
8 that absent a government motion for a 5K substantial  
9 assistance, or Mr. Mascoto's qualifying for a safety valve,  
10 that the court's minimum sentence would be 120 months.

11 THE COURT: Well -- and that would be granting the  
12 downward departure from 135 -- because the range is 135 to  
13 16- --

14 MR. BARBEE: Yes, Your Honor, you're correct. I  
15 apologize, you are correct. We would ask that the court apply  
16 the same reasoning that it did at the previous sentence, find  
17 that there are factors in this case that take it outside the  
18 heartland of those cases typically covered by the guidelines,  
19 and that Mr. Mascoto's previous abuse is extraordinary when  
20 compared with that of other defendants, and that the court  
21 grant the departure to 121 months for sentence based upon the  
22 defendant's youth and extraordinary childhood abuse.

23 THE COURT: Thank you.

24 Now, Mr. Mascoto, this is your opportunity to  
25 address the court.

1           THE DEFENDANT: Your Honor, the reason I asked for a  
2 change in my designation is because I have been there for a  
3 year and a half, and I have only been in one class because the  
4 prisons are so overcrowded. So I heard that Terminal Island  
5 has some good programs. I was wondering if I could go there,  
6 if I could? Other than that, I just wanted to thank you for  
7 giving me a second chance at life -- trying. And thank my  
8 lawyer for doing a good job.

9           That's about it.

10          THE COURT: Thank you.

11          Mr. Muehleck?

12          MR. MUEHLECK: On May 25th of 2001, we filed our  
13 objection to a downward departure motion and indicated we  
14 disagreed with Ms. Lovell's assessment that the information  
15 that she had used came only from the defendant; the  
16 defendant's mother was never interviewed. And we simply did  
17 not think this was a case outside the heartland. And I will  
18 just revoice those objections. We are familiar with the  
19 court's ruling before.

20          THE COURT: Okay, thank you.

21          MR. MUEHLECK: Thank you.

22          THE COURT: This case involved documented abuse of  
23 the defendant by his father, and the court had quite a lengthy  
24 record, I believe, from the Family Court in which to review  
25 the abuse that he had suffered.

1           That, coupled with his young age at the time of the  
2   commission of this offense, I think, go together to take it  
3   out of the heartland. And the court does find that the  
4   abuse -- the extraordinary abuse, and the fact that he was  
5   still so close to it, I -- I think there's a huge difference  
6   between somebody being 30 years old and complaining about  
7   something that happened in their childhood and a person who is  
8   as young as Mr. Mascoto when he committed this crime. And I  
9   think there has to be a connection seen between the closeness  
10   of the abuse and the events that trigger him being arrested  
11   and being brought before the court. And I do find that  
12   connection here.

13           Whereas I do not usually find it in situations with  
14   older defendants. I think you've got to make a distinction,  
15   but here I see that connection. So I do find it to be  
16   extraordinary and outside the heartland.

17           So I am going to sentence the defendant, based on  
18   the downward departure, to 120 months, five years' supervised  
19   release. I'm not going to impose a fine because I don't  
20   believe he can pay it. Nor community restitution. And a  
21   special assessment of \$100 that is imposed has previously been  
22   paid in full.

23           Now, there are conditions: One, that the defendant  
24   shall abide by the standard conditions of supervision. Two,  
25   the defendant shall not commit any crimes, federal, state or

1 local. Three, the defendant shall not possess any illegal  
2 controlled substances. Four, the defendant shall refrain from  
3 any unlawful use of a controlled substance. The defendant  
4 shall submit to one drug test within 15 days of release from  
5 imprisonment, and at least two drug tests thereafter, as  
6 directed by the Probation Office.

7           Number five, the defendant shall participate in a  
8 substance abuse program, which may include drug testing, at  
9 the discretion and direction of the Probation Office. Six,  
10 the defendant is prohibited from possessing a firearm, as  
11 defined by Title 18, United States Code, Section 921. Seven,  
12 the defendant is prohibited from possessing any illegal or  
13 dangerous weapons. Eight, the defendant shall participate in  
14 a mental health program at the discretion and direction of the  
15 Probation Office. And, nine, the defendant shall provide the  
16 Probation Office access to any requested financial  
17 information.

18           And the court is going to ask the Bureau of Prisons  
19 to provide vocational, educational, and the longest drug  
20 treatment program possible.

21           Now, I am not an expert on these prisons. I don't  
22 pretend to be. But within the last week I have had an  
23 attorney trying to talk his own defendant -- the defense  
24 attorney trying to talk his own defendant out of going to  
25 Terminal Island and suggesting that Lompoc was much more



1 conducive to a level of life that would be less difficult.  
2 The complaints that he raised -- and I do not know, I am just  
3 repeating what the defense attorney said -- was that it was a  
4 temporary situation for many, many people, and so the  
5 facilities, and the way it is set up, is more like the federal  
6 detention center here than one of the places that has more  
7 programs.

8           One possibility -- and I don't know how it would  
9 turn out -- is just to ask for the location that would give  
10 you the most access to programs and the 500-hour drug  
11 treatment, because the 500-hour drug treatment will get you  
12 time off your sentence. Now, it could send you anywhere, and  
13 if you're not up for that... but I think your stay is going to  
14 be more pleasant if you do go someplace where they actually  
15 have some programs and you can get into them.

16           Do you have any thoughts on that, Mr. Mascoto?

17           THE DEFENDANT: Yeah, I wouldn't mind going to  
18 Lompoc, but that's for low inmates, and I am a medium right  
19 now, being housed at Sheridan, Oregon. So, right now, I hear  
20 Terminal Island is the best medium on the west coast,  
21 Your Honor.

22           THE COURT: But you are not restricted to the west  
23 coast?

24           THE DEFENDANT: True.

25           I also heard --

1 (Discussion off the record  
2 between the defendant and counsel.)

3 THE DEFENDANT: Wisconsin -- I also heard Wisconsin.

4 THE COURT: Do you want me to put that down?

5 THE DEFENDANT: Yes, Your Honor, please.

6 MR. MUEHLECK: It's cold there...

7 THE COURT: Yeah, it's cold there.

8 THE DEFENDANT: It's cold at Sheridan, too. It  
9 snows.

10 THE COURT: Yeah, but Wisconsin and Oregon, trust  
11 me, there's a big difference.

12 MR. MUEHLECK: Yeah.

13 THE COURT: But, be that as it may, do you want me  
14 to recommend a particular place? Or do you want me to say a  
15 place where you would get the programs and the drug treatment?

16 THE DEFENDANT: I would like Wisconsin. Because I  
17 don't get the drug program, too, on the east coast, is why --  
18 because I have a two-point enhancement. They don't give you  
19 the year off no more.

20 (Discussion off the record between the  
21 Probation Officer and the defendant and counsel.)

22 THE COURT: Okay, so -- Oxford?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Wisconsin. Okay.

25 But I will also put that you are looking for access

1 to programs, and -- you're not going to get the longest drug  
2 treatment no matter what we do?

3 THE DEFENDANT: No. I can get the program, but I  
4 just don't get the time off. I am already on the wait list  
5 for the program, anyway, but I don't get the year off, because  
6 of -- they gave the discretion, I guess, to the BOP.

7 MR. BARBEE: That has to do with the two-point  
8 weapon enhancement.

9 THE COURT: Oh, yeah.

10 MR. BARBEE: Additionally, Your Honor, Mr. Mascoto  
11 wanted to read in, during his allocution portion, just his  
12 interpretation of the issues that the court dealt with, which  
13 I filed on his behalf. A very short statement he would like  
14 to read into the record.

15 THE COURT: Okay.

16 THE DEFENDANT: Your Honor, I don't understand why  
17 the government charged me under 841(b)(1)(A) when I don't have  
18 50 grams of ice, pure methamphetamine. Your Honor, as I read  
19 the statute, the statute makes a distinction between  
20 methamphetamine, its salts, isomers and salts of its isomers  
21 to mean a reference to pure methamphetamine. It also  
22 distinguishes between a mixture or substance containing a  
23 detectable amount of methamphetamine, its salts, isomers and  
24 salts of its isomers to mean a reference to impure  
25 methamphetamine.

1           The government even admitted in my response brief  
2   that what it contained was a mixture containing  
3   methamphetamine of 72 percent purity. The government also did  
4   not -- (incomprehensible) --

5           THE COURT: Read the last two sentences more slowly.

6           THE DEFENDANT: The government even admitted, in my  
7   response brief, that what it contained was a mixture  
8   containing methamphetamine of 72 percent purity. The  
9   government also did not quote me, Russell Mascoto, on notice  
10   in the indictment triggering the ten-year minimum mandatory.

11          THE COURT: Slow down.

12          THE DEFENDANT: And I assume Mr. Muehleck knows  
13   exactly what I am talking about. Mr. Muehleck has had this  
14   situation happen before with other drug cases that have gotten  
15   relief on the 841(b)(1)(B). That's why the government ended  
16   up superseding everyone who had ever pled guilty on --  
17   (incomprehensible) -- indictments with the proper statutory  
18   language triggering the minimum mandatory statutes.

19          So, as I read the statute, I feel that I should fall  
20   under 841(b)(1)(B), less than 500 grams of a mixture or  
21   substance containing methamphetamine.

22          That's all, Your Honor.

23          Thank you.

24          THE COURT: Okay, thank you.

25          You may appeal your conviction if you believe your

1 guilty plea was somehow unlawful or involuntary, or if there's  
2 some other fundamental defect in the proceeding that was not  
3 waived by your guilty plea. You also have a statutory right  
4 to appeal your sentence under certain circumstances,  
5 particularly if you think the sentence is contrary to law.

6 Now, this was sometime ago. And what appeal rights  
7 were waived in this plea agreement? Were they -- was this  
8 before we --

9 MR. MUEHLECK: Yes. Yes -- no, I think they were  
10 waived, Judge.

11 MR. BARBEE: My recollection --

12 MR. MUEHLECK: I think it was their standard --

13 THE COURT: But, remember that that was before --

14 MR. MUEHLECK: Right, right.

15 THE COURT: -- the time when --

16 MR. BARBEE: Yeah, since the government is the one  
17 that appealed in this case...

18 MR. MUEHLECK: Well, we always maintain that right  
19 to appeal in the standard --

20 MR. BARBEE: Yeah, I believe he waived his right  
21 except under two circumstances: A sentence above the  
22 guideline range and/or ineffective assistance of counsel.

23 MR. MUEHLECK: Page 4, Your Honor. He waives his  
24 right to challenge his sentence in any manner that's been  
25 determined -- collateral attack, etc., Page --

1 THE COURT: I just wasn't sure when that paragraph  
2 went in.

3 MR. MUEHLECK: Yeah.

4 THE COURT: So, you have entered into a plea  
5 agreement which waives some of your rights to appeal the  
6 sentence itself. And such waivers are generally enforceable.  
7 But if you believe the waiver is unenforceable, you can  
8 present that theory to the appellate court. And with few  
9 exceptions, any notice of appeal must be filed within ten days  
10 of judgment being entered in your case. If you are unable to  
11 pay the cost of an appeal, you may apply for leave to appeal  
12 in forma pauperis. And if you so request, the clerk of the  
13 court will prepare and file a notice of appeal on your behalf.

14 It would seem to me that given that the plea  
15 agreement contained an inaccuracy, that that would be a basis  
16 under which there would be the ability to open the door for an  
17 appeal, because given that inaccuracy -- while I agree with  
18 Mr. Muehleck that it doesn't necessarily make a difference if  
19 you interpret the statute the way he has, and the way some of  
20 those Ninth Circuit cases do, it still is an issue which means  
21 that the plea agreement was not totally accurate, and it is an  
22 interesting issue, and it could be the case to -- you know...  
23 it has a lot of aspects that make it a case that's worthy of  
24 appeal, I think.

25 Okay, so, I'm going to recommend that you would go



1 to a venue that allows educational, vocational and longest  
2 drug treatment possible, including -- and you have requested  
3 Oxford, Wisconsin. And I don't think there's anything else --  
4 there are no counts to be dismissed?

5 MR. MUEHLECK: No. I was just going to ask the  
6 court if I could put my objection on the record for the  
7 departure, as our position is, it's outside the heartland and  
8 I -- for whatever that's worth, Your Honor.

9 THE COURT: You can certainly -- you can put it on  
10 the record, but as a family -- as a former Family Court judge,  
11 the court, having reviewed a number of Family Court records,  
12 finds this to be extraordinary in the sense that you don't  
13 usually get documented, prosecuted cases of child abuse, in  
14 terms of people coming here for sentencing. I don't know that  
15 I have seen another one. If I did, it's one in nine years. I  
16 mean, it's -- you don't get records like that.

17 MR. MUEHLECK: Your Honor, you have never departed  
18 for me -- or, a case I had where you departed on someone in  
19 their thirties where there was child abuse. I have never had  
20 that before.

21 THE COURT: No, and you probably won't.

22 MR. MUEHLECK: I understand the court. And I think  
23 you said that in the case where it was raised, Your Honor.  
24 And I understand where the court's coming from.

25 Thank you.

1 THE COURT: I think we are all clear.

2 MR. MUEHLECK: I think so.

3 THE COURT: Okay, thank you.

4 Good luck, Mr. Mascoto.

5 THE DEFENDANT: Thank you, Your Honor. God bless.

6 THE CLERK: Please rise.

7 Court stands recessed subject to call.

8 (The hearing in the above-entitled

9 cause was concluded at 4:23 p.m.)

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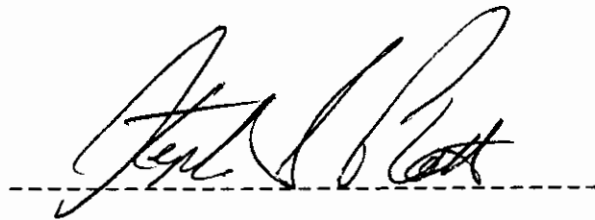
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-ooOoo-

I, Stephen B. Platt, Official Court Reporter,  
United States District Court, District of Hawaii, do hereby  
certify that the foregoing is a true and correct transcript of  
proceedings before the Honorable Helen Gillmor, United States  
District Judge.

A handwritten signature in black ink, appearing to read "Stephen B. Platt", is written over a horizontal dashed line.

FRIDAY, MARCH 19, 2004

STEPHEN B. PLATT, CSR NO. 248